IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

MFA.No. 990 of 2001(D)

OP(MV).4214/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, VADAKARA.
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APPELLANT: CLAIMANT

NAVATH RAJENDRAN, S/O. ANDY,
'NANI NILAYAM', NEAR PUNCHIRI MILL,
CHORODE AMSOM, ERAPURAM DESOM,
VADAKARA TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.R.PARTHASARATHY
SMT.S.LAKSHMI

RESPONDENTS: RESPONDENTS
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1. **P.BALAKRISHNAN, S/O. RAMAN KUTTY,**
KOLOTH HOUSE, ERAMANGALAM BALUSSERY.

2. **NANU, S/O. KELAPPAN, KAYAKULANGARA,**
KAKKATTIL AMSOM, DESOM, P.O. VATTOLI
VADAKARA TALUK.

3. **THE UNITED INDIA INSURANCE CO. LTD.,**
VADAKARA.

BY ADV. SRI.M.S.PATTALI
SRI.T.VINOD KUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.T.SANKARAN, JJ.

M.F.A.No.990 OF 2001

Dated 4th December, 2007

JUDGMENT

Koshy,J.

Appellant/claimant sustained injuries in a motor accident that occurred on 6.6.1995. While he was riding a motor cycle, a bus hit the motor cycle and as a result he sustained serious injuries. He claimed a compensation of Rs.2,50,000/=, but, the Tribunal has awarded only Rs.23,500/=. Only quantum of compensation is disputed in this appeal as it was found that the offending vehicle was insured by the third respondent insurance company.

2. Ext.A7 is the wound certificate issued from the Government Hospital, Vadakara dated 6.6.1995. It shows the following injuries:

> "Lacerated wound of right foot on the side of big toe 10 x 3 x 3cms, lacerated wound right foot on the dorsum 10 x 3 x 2cms, lacerated wound of medial malleolus 3 x 3cms and suspected fracture right tibia and fibula."

Ext.A8 is the Index Card which shows that he was admitted on 6.6.1995 and discharged on 20.7.1995. Treatment record shows that there was part III compound fracture both bones right leg lower 1/4th and fracture

base of 1st metatarsal right. Exts.A9 and A10 would show that he had undergone continued treatment. Ext.X2 is the treatment record issued from the Medical College Hospital, Kozhikode. Tribunal awarded compensation as follows:

"1. Loss of earning	:	Rs.2,000/-
2. Transport to hospital	:	Rs.2,000/-
3. Extra nourishment	:	Rs.2,000/-
4.Damages to clothing and articles	:	Rs. 500/-
5. Medical expenses	:	Rs.10,000/-
6. Other expenses	:	Rs.2,000/-
7. Compensation for pain and sufferings	:	Rs.4,000/-
8. Compensation for loss of earning power	:	Rs.1,000/-
Total		Rs.23,500/-

According to the claimant, he was a self employed person doing brokerage business and according to him, his monthly income was Rs.3,000/=. He was aged 46. There is no evidence regarding his income. Since he was maintaining a family and considering the statement, we are of the opinion that at least Rs.1,800/= can be fixed as the monthly income. He had fracture of metatarsal bone as well as tibia and fibula of the right leg. Apart from the inpatient treatment he was in plaster cast. Considering the fracture, we are of the opinion that at least for three months he was unable to do any work and for loss of actual earning he ought to have been granted Rs.5,400/= (Rs.1,800 x 3). Tribunal has awarded only Rs.2,000/= for

loss of earning. Hence, he is entitled to an additional amount of Rs.3,400/= on that count. Tribunal has granted only Rs.4,000/= for pain and suffering. Considering the fracture and long treatment, we are of the opinion that another Rs.3,000/= can be awarded under that head. Appellant has claimed Rs.50,000/= as compensation for loss of earning power. Tribunal has awarded only Rs.1,000/= and no amount was granted for disability. No disability certificate was produced. At the same time, he was having fracture of the lower leg. In the above circumstances, for loss of amenities and difficulties that arose due to the fracture, we are of the opinion that at least Rs.5,000/= ought to have been granted. Hence, the appellant is entitled to an additional amount of Rs.4,000/= under that head. Medical expenses were reimbursed by the Tribunal. Thus, the additional amount payable will be Rs.10,400/=. The above Rs.10,400/= should be deposited by the third respondent insurance company, over and above the decreed amount by the Tribunal, with 7.5% interest from the date of application till its deposit. On deposit of the amount, appellant is allowed to withdraw the same.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.T.SANKARAN
JUDGE

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